
Dairi Lead-Zinc Mine Construction Project
(Mill Control System)

PURCHASE CONTRACT



Contract No.:_____

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PURCHASE CONTRACT FOR (Mill Control System)

This Purchase Contract is made on (date) (the “**Effective Date**”) in Sidikalang, North Sumatra Indonesia between the following parties:

- (1) **PT. DAIRI PRIMA MINERAL**, (DPM), a corporation incorporated under the laws of Republic of Indonesia, represented by [**Gong Xuedong**] (hereinafter referred to as the "**Buyer**") and having its head office of business in Bakrie Tower 10th floor Complex Rasuna Epicentrum Jl. HR Rasuna Said Jakarta Selatan Indonesia; and

- (2) [_____], a corporation incorporated under the laws of____, represented by [_____](hereinafter referred as to the "**Seller**") and having its head office of business in_____.

Under this Agreement, they will be collectively referred to as “Parties” or individually as “Party”.

WHEREAS the Buyer desires to purchase from Seller and Seller desires to sell to Buyer certain equipment, along with services of installation and technical support.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1 DEFINITIONS

In the text of this contract, the following words and expressions shall have the meanings hereby assigned, except where the context requires otherwise:

- 1.1 “**Acceptance**” means the Buyer accepts the Equipment after it reaches the technical performance and guarantee indexes specified in Appendix 2 and Appendix 10 in the Performance Test or is used by the Buyer for production.
- 1.2 “**Advance Payment**” has the meaning set forth in Clause 4.2.
- 1.3 “**Advance Payment Guarantee**” has the meaning set forth in Clause 4.3
- 1.4 “**Contract Currency**” means the currency in which the payment is made under the contract.
- 1.5 “**Commissioning**” means production test-run carried out after charging raw material and power, including test-run of system and all the equipment. The commissioning shall be carried out after the pre-commissioning is successfully completed.
- 1.6 “**Contract Price**” means the price payable to the Seller under the contract for full and proper performance of its contractual obligations, details of which are specified in Clause 3.1 of this Contract.

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- 1.7 **“Design”** has the meaning set forth in Clause 5.1.
- 1.8 **“Equipment”** has the meaning set forth in Clause 2.1
- 1.9 **“Erection”** refers to the erection work including assembly, connecting and placing the parts to its position according to the design drawings and erection manual of all the Equipment.
- 1.10 **“Factory”** means the factory where the Seller manufactures the Equipment.
- 1.11 **“Final Acceptance”** has the meaning set forth in Clause 9.6.
- 1.12 **“Performance Test”** means the tests conducted pursuant to Appendix 10, in order to examine whether the Equipment and Contract Product have achieved the technical performance and guarantee indexes as per Appendix 10.
- 1.13 **“Performance Guarantee”** has the meaning set forth in Clause 4.3.
- 1.14 **“Plant”** shall have the meaning provided in Clause 2.1.
- 1.15 **“Pre-commissioning”** means the test to be conducted respectively on the individual equipment after mechanical Erection. Pre-commissioning will include no-load test of equipment in order to check the mechanical performance of the Equipment.
- 1.16 **“Quality Certificate”** has the meaning set forth in Clause 6.9.
- 1.17 **“Quality Control Manual”** has the meaning set forth in Clause 6.3.
- 1.18 **“Site”** means the place where the Equipment will be erected and the Plant is located .
- 1.19 **“Technical Specification”** means the technical indexes, specifications, drawings and documents of the Equipment which to be approved by the Buyer just before the manufacture or during first design liaison meeting.
- 1.20 **“Technical Documents”** means the technical indexes, specifications, drawings, manuals and documents related to design, inspection, Erection, Pre-commissioning, Commissioning, Performance Test, operation and maintenance of Equipment, details of which is specified in Appendix 3.
- 1.21 **“Technical Supervision”** means the technical instruction, assistance and supervision related to the Seller during Unpacking and inspection of equipment, Erection, Pre-commissioning, Commissioning, Performance Test, Operation, Maintenance and other work related to the Equipment, details of which are specified in Appendix 5.
- 1.22 **“Training”** means the training rendered by the Seller to the Buyer as specified in Appendix 6.
- 1.23 **“Warranty Period”** means a period starting from the date of Acceptance, during which the Seller warrants the proper and stable operation of the Equipment and is responsible for eliminating any defects with respect to the Equipment, details of which are specified in Clause 11.

2 SUBJECT OF THE CONTRACT

- 2.1 The Buyer shall purchase from the Seller, and the Seller shall supply the following works in accordance with the Contract.
- (a) design of [Mill Control System] (hereinafter referred as to the **“Equipment”**) for [Dairi Lead-Zinc Mine Construction Project] (hereinafter referred as to the

“**Plant**”) in accordance with the Technique Documents and Work Scope provided by the Buyer

- (b) manufacture and delivery of the Equipment;
- (c) delivery the Equipment to the Medan port;
- (d) installation, commissioning and maintenance of the Equipment;
- (e) necessary training the Buyer’s technical persons; and
- (f) other works provided in the Appendix 1 [Scope of Equipment Supply].

The scope of the Equipment will include complete set of equipment, materials and spare parts for one (1) years operation as specified in Appendix 1 as well as the relative Technical Documents for installation, commissioning, operation and maintenance as specified in Appendix 3 of this Contract.

2.2 The Seller warrants that the Equipment shall meet the specifications and reach the technical index and performance guarantee index as specified in Appendix 10 of this Contract.

2.3 As its obligations under this Agreement, the Seller shall:

- (a) dispatch experienced, healthy and qualified engineers to the site of the Plant for Technical Supervision over installation, pre-commissioning, Commissioning and performance test of the Equipment. The number of the people and scope of technical service etc. will be indicated in Appendix 5 of this Contract.
- (b) be responsible for training of the Buyer’s technical persons. The number of the people, content and place of the training will be indicated in Appendix 6 of this Contract;
- (c) supply all the necessary spare parts needed for the Equipment in normal operation for one (1) years after the guarantee period of the Plant expires.

3 PRICE

3.1 The total contract price of this Contract is _____ (SAY IN WORDS US DOLLARS____) (the “**Contract Price**”). The breakdown of the total Contract Price is detailed in Appendix 4.

3.2 The Seller shall bear all the costs for the delivery of Manuals to the Buyer’s head office in the Village of Parongil, Sub-District Silima Pungga-Pungga, District of Dairi, province of North Sumatera, Indonesia..

3.3 In the event both the Seller and the Buyer, after signing of this Contract, agree to revise the Seller’s scope of supply as stipulated in Appendix 1 of this Contract, the increased or decreased value of the total contract price shall be calculated in accordance with the breakdown prices as specified in Appendix 4 of this Contract.

4 TERMS OF PAYMENT

- 4.1 The payment of the Contract Price shall be effected by T/T.
- 4.2 The Buyer shall pay the advance payment equal to 30 % of the total Contract Price (the “**Advance Payment**”) within seven (7) days after receipt of the Advance Payment Guarantee mentioned in Clause 4.3(a).
- 4.3 Within 15 days after signing this Agreement, the Seller shall issue all the bank guarantees as mentioned below to the Buyer through a first class bank acceptable by the Buyer’s bank.
- (a) Advance Payment Guarantee
- The Seller shall issue an Advance Payment Guarantee in favor of the Buyer for the amount equal to the Advance Payment.
- The amount of the Advance Payment Guarantee shall be reduced in proportion to the shipping documents of each shipment of the Equipment actually delivered by the Seller from time to time as well as in proportion to the services performed by the Seller from time to time and shall automatically become null and void after the date of the last package of equipment is delivered to the site and the last service is performed.
- (b) Performance Guarantee
- The Seller shall issue in favor of the Buyer a Performance Guarantee for an amount equal to []% of the Contract Price (Refer to Appendix 9 for a form of performance guarantee). This Performance Guarantee will be reduced to []% as maintenance guarantee after the Final Acceptance of the Plant by the Buyer.
- 4.4 The Contract Price shall be paid as follows:
- (a) 30 % of the corresponding Contract Price will be payable as advance payment against the following documents presented to the Buyer:
- (i) [1] set of original invoice
- (ii) [1] set of Advance Payment Bank Guarantee
- (b) 40 % of the corresponding Contract Price will be payable as interim payment after shipment and against the following documents received by the Buyer.
- (i) [1] set of original invoice;
- (ii) the packing list for all the Equipment;
- (iii) full set of clean on board ocean Bills of Lading marked “Freight prepaid”.

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- (iv) the certificate of origin of all the Equipment;
 - (v) the Quality Certificate of all the Equipment;
 - (vi) the technical documents of all the Equipment.
- (c) 30 % of the corresponding Contract Price will be payable after all the Equipments' commissioning is completed and agreed by the Buyer, and against the following documents received by the Buyer.
- (i) [1] set of original invoice;
 - (ii) [1] set of original Warranty Guarantee issued by the Seller's bank covering 10% of the total contract price;
 - (iii) [1] set of acceptance certificate signed the buyer;
 - (iv) [6] set of hardcopy of technical documents of all the Equipment.

5 DESIGN

- 5.1 The scope of design work to be done by the Seller will be specified in Appendix 3 of this Contract (the "**Design**"). The Seller warrants that the Design shall meet the requirement for the Plant.
- 5.2 The Seller shall provide the Technical Documents specified in Appendix 3 [*Technical Documents*] to the Buyer in accordance with the time schedule (4 weeks) specified in Appendix 11 [*Schedule*].
- 5.3 The Buyer will be entitled to make suggestions for the Design, which the Seller shall accept to the extent practical. Both Parties shall sign memorandum on the subjects discussed in the meeting as a final design basis.
- 5.4 The Buyer is entitled to send its representative to the design institute and the Seller's factory to review data and documents in connection with the Equipment. The Seller shall fully cooperate and try its best to offer the Buyer convenience in visa applying, return air tickets, working and living etc.
- 5.5 The Seller shall timely reply to questions raised by the Buyer related to the Equipment and provide related documents at his own expenses.
- 5.6 Any confirmation made by the Buyer shall not release the Seller's liabilities under the Contract.

6 INSPECTION AND TEST

- 6.1 The Buyer is entitled to send inspectors appointed by the Buyer to inspect the

Equipment at the Factory or the shipping port and the Seller shall cooperate with such inspectors. If the Equipment fails to pass the inspection due to the Seller's reason, any costs for the following inspections shall be borne by the Seller.

- 6.2 The Seller shall carry out the manufacturing, selection of material, inspection and test for the Equipment in compliance with the existing statutory and industrial standards and criterion in the Seller's country and in case in the Seller's country there is no such standard or criterion, in compliance with international standard and criterion.
- 6.3 During the first design meeting, the Seller shall submit the standards and criterion of the Seller's country as stated in Clause 6.2 in two copies to the Buyer. The Buyer may provide comments to the above-mentioned standards and criterion. Once discussed and agreed by both Parties, these standards and criterion shall constitute the standards for inspecting the Equipment.
- 6.4 In case that the standards or criterion provided by the Seller is incomplete, outdated, or inconformity with the prevailing international standards and practice, the Buyer may request the Seller to update the inspection standards or carry out the inspection according to the Buyer's standards, which will be provided to the Seller before the test is carried out.
- 6.5 The Seller shall submit to the Buyer the quality control manual (the "**Quality Control Manual**") for design and manufacturing of the Equipment within two weeks of the Effective Date of the Contract. The Quality Control Manual shall provide the Seller's quality control system, as well as steps and methods for tests, inspections and other necessary quality control measures, which after the approval by the Buyer, shall become the basis for quality control of the works.
- 6.6 The Seller shall submit to the Buyer the detailed time schedule for design and manufacturing of the Equipment within two weeks of the Effective Date of the Contract. Such detailed time schedule shall be in compliance with the time schedule specified in Appendix 10 of this Contract.
- 6.7 During the manufacturing of the Equipment, the Buyer is entitled to send its personnel to participate the inspection, test, assembly of the Equipment together with the Seller's inspectors. At least one month prior to the tests to each part of the Equipment, the Seller shall provide the time schedule to the Buyer for its attendance. The Seller shall use its best efforts to assist the Buyer in visa applying, working facilities and accommodations etc. Unless otherwise agreed by the Buyer, the Seller shall not perform the tests without the Buyer or its inspector's attendance.
- 6.8 During the manufacturing of the Equipment, the Seller shall submit progress report of the works weekly according to the time schedule specified in the Appendix 11 and/or at such intervals as required by the Buyer. This report shall include the percentage of

completion, pictures showing the works, delays comparing to the schedule, and the Seller's proposed remedy to remedy such delays.

- 6.9 Before delivery, the Seller shall make a precise and comprehensive inspection and test of the Equipment in accordance with the relevant standards and specification and issue certificates (the "**Quality Certificate**") certifying that the Equipment are in conformity with the specifications and requirements of the Contract. Particulars and results of test carried out by the Seller must be shown in a statement attached to the Quality Certificate. However, the Quality Certificate shall not be considered as final report in respect of quality, specification, performance and quantity/weight.
- 6.10 The items to be inspected or tested shall be discussed and agreed between the Buyer and the Seller. Testing will be performed on each major component and main electrical panel and accessories in accordance with pre-assembly level of the Equipment. The Seller shall inform the Buyer by fax and E-mail 30 days prior to the scheduled date for the such inspection or test. Unless otherwise agreed between the Parties, the delivery test shall only be carried out in the presence of the representatives of the Buyer.
- 6.11 All expenses involved in the inspection and test of the Equipment shall be for the Seller's account.
- 6.12 In case the Buyer finds the Equipment defective or not in conformity with the technical specification and technical standards specified in the Contract, the Seller shall, at his own expenses, take all necessary means to eliminate the defects. After the defects are eliminated, the Seller shall carry out the inspection and test again at his own expenses.
- 6.13 The Seller shall be liable for proper packing and preservation as specified in Clause 8. The packages shall be opened only before erection at the Site in the presence of the Seller's technical personnel. The Buyer shall notify the Seller of the date of unpacking inspection 10 days prior to the scheduled date. If the Seller's representative fails to attend such unpacking inspection, the Buyer's representative can carry out the unpacking inspection in respect of quality, specifications and quantity/weight of the Equipment in the absence of the Seller's representatives and a survey report shall be issued therefore.
- 6.14 Should any shortage, defect, damage or other non-conformity with the Contract be found with the Equipment during the unpacking inspection, the Buyer's representative can issue an inspection certificate, which can be taken by the Buyer as effective evidence to claim against the Seller. The Buyer is also entitled to claim against the Seller in accordance to Clause 11.9, if the said shortage, defect, damage or other non-conformity with the contract has caused a delay to the completion of Contract according to Appendix 11.
- 6.15 Should the Equipment be found defective within the Warranty Period for any reasons, including but not limited to latent defect or the use of unsuitable materials, the Buyer is

entitled to carry out an inspection and claim against the Seller based on the such inspection.

- 6.16 The Seller shall replace any defective parts and supply any missing part free of charge immediately after receiving a claim from the Buyer and shall be responsible for the risk associated with delivery and installation of such parts at the Site. For components what need a long delivery time, the delivery schedule shall be discussed and agreed upon by the Parties.

7 DELIVERY

- 7.1 The Seller shall deliver in batches all the equipment and Technical Documents as specified in Appendix 1 and 3 under this Contract in accordance with the time schedule as per Appendix 11.
- 7.2 The loading ports will be advised prior to the shipment. The destination port will be [Desa Longkotan, Tombak Manjolor Kecamatan Silima Pungga-Pungga, Kabupaten Dairi Sumatera Utara].
- 7.3 Not later than 30 days prior to the first shipment, the Seller shall submit to the Buyer the preliminary delivery schedule in three (3) copies including the contract number, shipment lot, shipment date, equipment number, equipment name, type, total amount, quantity, approximate total net weight gross weight, and volume. The Buyer shall confirm such schedule with the Seller within [7] days after receipt. The Seller shall also submit to the Buyer the equipment delivery document.
- 7.4 The Seller shall inform the Buyer by fax/email about readiness of the Equipment for shipment and fax copies of [2] including inspection certificate to the Buyer for its approval not later than 5 working days before each scheduled shipping date. Each Shipment shall be performed only after written approval of copies by Buyer's representative. The Buyer shall confirm copies of documents within [5] working day.
- 7.5 Each separate waybill shall have in English and (Bahasa): number of the agreement, goods name, unit quantity, packages quantity, gross and net weight, H.S.code. railway, truck, air, post way billing instructions shall be agreed with the Buyer beforehand.
- 7.6 After the Equipment or any part of it is shipped, but not later than 24 hours, the Seller shall advise the Buyer by fax/email the following data:
- (a) Number of the agreement;
 - (b) Equipment name;
 - (c) Date of shipment;
 - (d) Gross and net weight;

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- (e) Unit quantity;
 - (f) Total amount of the Equipment;
 - (g) Departure place/port;
 - (h) Crossing point at the custom frontier.
 - (i) [other documents]

- 7.7 The Equipment delivered shall be in a complete set, and the special tools, materials and wearing parts needed for site installation as well as the documents listed in Appendix 12 shall be delivered together with the Equipment. If there are any Equipment and/or materials, which need special protection, the Seller should have proper packing and take special protection measures.
- 7.8 Whenever the Equipment is ready, the Seller shall send a notice of readiness to the Buyer by letter or fax.
- 7.9 The Seller shall be responsible for transportation insurance. If the Seller has the Equipment ready for transportation before the scheduled shipment date, the storage charges, insurance premium, interest and all the other additional expenses shall be for the Seller's account.
- 7.10 The final Technical Documents stipulated in Appendix 3 shall be delivered in seven 7 copies plus one copy in electronic format and sent directly to the Buyer's head office by air or by post as per the address mentioned in Clause 22.2.
- 7.11 In case of any shortage, loss or damage caused to the Technical Documents, the Seller shall make supplementary delivery for such documents at his own expenses within 14 days after receiving the Buyer's notice.
- 7.12 The unpacking checking shall be carried out by the representatives of both Parties within two (2) weeks after the whole equipment as supplied by the Seller arrives at the Site. The Buyer shall, within two (2) weeks prior to the unpacking checking, notify the Seller, and shall offer working facilities to the persons from the Seller. The Seller shall send its representatives at its own expenses to participate the unpacking checking at the Site. In case the Seller fails to send its representatives within the specified date, the unpacking checking shall be carried out as scheduled, and the record for unpacking checking signed by the representative of the Buyer shall be deemed as the conclusive document and binding on the Seller.
- 7.13 Should any shortage, defect, damage or anything which are not in conformity with the Contract be found during the unpacking checking, detailed records shall be prepared, and shall be signed by the authorized representatives from both Parties. These records shall be taken as the effective evidence for the Buyer to request replacement, repair or

supplement from the Seller by sending defect notice.

- 7.14 The Seller shall, within fourteen (14) days after receipt of defect notice sent by the Buyer according to the unpacking checking records, take necessary actions, such as on-site repair, deliver free replacement or supplement of shortage parts etc., and shall bear all costs and expenses so occurred. The supplementary articles shall be delivered at the Site.
- 7.15 If the Seller fails to meet the requirements in Clause 7.14, the Buyer shall be entitled to claim reasonable expenses occurred when performing the work by themselves or any third party engaged by the Buyer, and deduct the corresponding liquidated damages from any due payment after notifying the Seller.
- 7.16 The unpacking checking shall not release the Seller's responsibilities under this Contract.
- 7.17 Should any damages be found during the installation of the Equipment and such damages is not caused by the Seller, the Seller shall assist the Buyer to supply again or replace the damaged parts as soon as possible, and all the expenses thus occurred shall be borne by the Buyer.

8 PACKING AND MARKING

- 8.1 The Seller shall have the Equipment properly and strongly packed and shall take measures to protect the Equipment from moisture, rain, rust, corrosion and shock, etc. according to their different shapes and special features so as to withstand numerous handling, loading and unloading as well as long-distance sea, air and inland transportation to ensure the safe arrival of the Equipment at the Plant without any damage or corrosion.
- 8.2 Not later than 30 days prior to the first shipment, the Seller shall submit to the Buyer:
- (a) Requirements and precautions for storage of the Equipment;
 - (b) If there are any dangerous or inflammable articles in the Equipment, the name, quantity and features of such articles and proposing special protection measures and description of accident handling process;
 - (c) Description of any special precautions needed for Equipment with a special requirement for temperature, shock, etc. during transportation;
 - (d) Packing list with net weight, gross weight and dimension (L*W*H) for each package;
 - (e) Packing list for over-sized package.
- 8.3 The Seller shall be responsible for transportation, insurance, moreover shall provide

with the general management and control for the Equipment to be unloaded at the places appointed by the Buyer. Goods supplied under the present agreement shall have bar-code to be agreed with the Buyer.

- 8.4 Each component or part shall be fixed firmly in package and be labeled correspond with the packing list which indicates the contract number, name of the host machine, and name of the component or spare part as well as quantity, position number, spare parts number in assembly drawing. Spare parts and tools shall be marked with the words "**Spare Parts**" or "**Tools**" in packing list.
- 8.5 The Seller shall print shipping marks on four (4) sides of each packing case of the Equipment with indelible paint in conspicuous English printed words. The Buyer shall inform the Seller of the marks by fax one month prior to the delivery.
- 8.6 Should the Equipment weights two (2) metric tons or more than two (2) metric tons, weight and hoisting position shall be marked on two (2) sides of each packing case in English. For different requirements in loading, unloading and transportation of the Equipment, the packing case shall be conspicuously marked with "Handle with Care", "Right Side Up", "Keep Dry" or etc. in English and with appropriate international trade transportation practice marks and illustrative marks.
- 8.7 The shipping marks under Clause 8.6 hereof shall be indicated with metal labels for nude cargo delivered without packing case.
- 8.8 In case the Equipment being found damaged or lost due to improper packing, the Seller shall be responsible for repair, replacement or supplement as mentioned in Clause 6.13 and 6.14 of this Contract.

If any damage to the cases is found at the port of unloading or the Site, which could affect the protective measures for storage, the Buyer shall notify the Seller of the damages immediately and the Seller shall send its representative to inspect whether the Equipment inside is damaged or not immediately. If the Seller fails to send its representative in time, the Buyer is entitled to unpacking the Equipment to carry out such inspection and in case the Equipment is found unaffected, the Buyer can pack the Equipment for storage at Seller's cost.

9 INSTALLATION, PRE-COMMISSIONING AND ACCEPTANCE

- 9.1 The Seller shall provide complete and correct Technical Documents for the Equipment installation, pre-commissioning, commissioning and performance test in accordance with the requirements of as specified in Appendix 3 of this Contract and shall timely send qualified and experienced technical people to the Site for technical service through an arrangement of the Buyer.
- 9.2 The Equipment shall be checked by the Seller at no load after completion of assembly

and installation of such Equipment in the presence of the Buyer in the manner and by means defined in this Contract concluded between the Parties.

- 9.3 If Pre-commissioning is successfully completed in accordance with the requirements of Technical Documents, both Parties shall sign a Certificate of Completion for Installation within seven (7) days to prove that the Equipment installation has been completed. Signing of this certificate shall not release the Seller from technical responsibility and obligations as stipulated in this Contract.
- 9.4 If any part of the Equipment does not pass any test or commissioning for reasons for which the Seller is responsible, the Seller shall make all necessary changes within the timeframe agreed with the Buyer so that the Equipment pass tests. Repeated testing shall be performed within the reasonable period of time.
- 9.5 The Performance Test shall be conducted in accordance with Appendix 10 of this Contract when the Plant enters into a stable operation after commissioning of the Plant, and then both Parties' authorized representatives shall sign on the daily test record. From the beginning of the test agreed on by both Parties, if the Performance Test is up to guarantee index as specified in Appendix 10 within seven (7) successive days of normal operation of the Equipment, then it shall be deemed to be completed. Both Parties shall sign a Final Acceptance Certificate within seven (7) days to prove the completion of the Performance Test, and the Equipment shall be accepted by the Buyer.
- 9.6 Final Acceptance of the Equipment shall occur (i) upon the signing of the Final Acceptance Certificate or (ii) no later than 9 months after scheduled date if Performance Test is delayed by no default of the Seller.
- 9.7 If the Performance Test fails to complete due the Seller's reason, an extension time will be reasonably agreed by the Parties for the Seller to make necessary adjustment, repair and replacement and/or modification, then the test shall be carried out again according to the stipulations in Appendix 10 of this Contract and the Buyer shall provide necessary assistance.
- 9.8 In the event during the period of installation, test run, Pre-commissioning, Commissioning and Performance Test, defects are found in the Equipment and materials as provided by the Seller or the Equipment are damaged due to the wrong guidance given by the technical personnel from the Seller, and/or the mistakes of design as provided by the Seller, the Seller shall repair and replacement immediately for free and bear all the expenses thus occurred. The replacement shall be finished within fourteen (14) days after the Seller receives the notice from the Buyer. In case the Seller fails to do so as scheduled, he shall pay the liquidated damages according to Clause 11.12.
- 9.9 If the Performance Test result cannot meet any technical and economic indexes as specified in Appendix 2 of this Contract, the Seller shall immediately take all necessary effective measures to make the Equipment up to the specified index in this Contact. In case the prescribed technical index can still not be reached within the time limit as specified in Clause 11.6 of this Contract, the Buyer is entitled to reject the Equipment

and claim direct damages against the Seller according to the Contract.

- 9.10 All direct and reasonable expenses needed for modifying the Equipment and all the expenses of the Seller's technical people during the extension time shall be borne by the Seller. The equipment, parts or material for replacement shall be delivered at the Site.
- 9.11 If spare parts supplied by the Seller for Commissioning are used up during Commissioning and Performance Test, the spare parts for production can be used first. The Seller shall make supplementary supply of the spare parts promptly at his own expenses.
- 9.12 The acceptance of the Equipment shall not release the Seller's responsibilities under the Contract.

10 PATENT, COPYRIGHT, TRADEMARK AND LICENSE

- 10.1 The Seller indemnify and hold harmless the Buyer, its employees, agents, and representatives from any all claims, damages, fees, expenses, and costs for infringement of any patent, design right, copyright, trademark or other rights protected under the intellectual property law in any jurisdiction caused by or resulting from the use of the Design and the Equipment.
- 10.2 The Seller warrants that the Design, the Equipment supplied under this Contract, and the purchase or use of such Equipment, including any equipment and technology offered by the Seller's subcontractor, do not or will not infringe any third party's intellectual property right, including rights relating to patent, trademark, trade secret or copyright.
- 10.3 In the event that there is any claim, litigation or arbitration against the Buyer for infringement resulting or caused by its purchase or use of the Design and Equipment, at the Buyer's sole discretion, the Seller shall, at its expense, either (i) procure for the Buyer and its customers the right to continue to use the Equipment that is the subject of claim or action or (ii) modify the Equipment so that it becomes non-infringing; or (iii) carry any other conduct as agreed by the Parties.
- 10.4 Information contained in the Seller's proposal and contract includes proprietary information furnished to the Buyer and its architect/engineer, consultant or agent for evaluation of Seller's proposal and its performance under the contract. Neither such proposal, the contract nor any information contained therein nor any proprietary information furnished pursuant thereto, shall be disclosed to others or used for any other purpose without the prior written approval of Seller. The Seller shall retain sole title to all proprietary information, including any engineering drawings or other contractual deliverables, but it shall grant to Buyer a royalty-free, limited license to use any contractual deliverables for operation and maintenance of the Equipment.

11 GUARANTEE PERIOD, CLAIM AND PENALTY

- 11.1 The Seller warrants that the Equipment and materials are completely new and in conformity with the manufacturing technical standards. Their specification, performance, safe operating requirements, service life and quality shall be in accordance with the stipulations in Appendix 1, 2 and 10 of this Contract.
- 11.2 The Seller warrants that the delivered Technical Documents and drawings are clear, complete and accurate, satisfying the needs for design, installation, operation and maintenance of the Equipment and conforming to the stipulations in Appendix 3 of this Contract.
- 11.3 The Guarantee Period for the Equipment and materials supplied by the Seller shall be twelve (12) months after Final Acceptance of the Equipment as mentioned in Clause 9.5 of this Contract. In case of delays in acceptance due to reasons attributable to the Buyer, the Guarantee Period shall be [12] months from the date of Final Acceptance .
- 11.4 If, during the Guarantee Period, any defects are discovered, the Buyer shall give a relevant notice to the Seller which shall send its representative to the Site within no later than five (5) calendar days upon the date of obtaining entry visa to [the country of Plant]. The Parties shall execute a report of defects and faults found.
- 11.5 Such report shall indicate:
- (a) date and place of report execution;
 - (b) details of defects;
 - (c) comments and requirements of the Buyer with respect to elimination of defects, etc.;
 - (d) deadline for elimination of defects by the Seller.
- 11.6 In the event the Seller fails to send its representative within the time mentioned in Clause 11.5, refuses to execute or sign a report of defects discovered, or fails to eliminate any defects, the Buyer may engage a third party to conduct an examination or cure the defects. The costs and expenses arising in connection with examination or elimination of the defects shall be borne by the Seller.
- 11.7 During the Guarantee Period, if the repair or replacement of the Equipment and materials is for the Seller's reason and results in the shutdown of the Equipment, the Guarantee Period shall be extended accordingly in accordance with the actual time of shutdown. The guarantee period for the replaced equipment and materials shall be twelve (12) months after the completion of replacement and acceptance.

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- 11.8 In case of claim for damages, the Buyer shall, in accordance with the terms in the Performance Guarantee, directly send the claim notice to the Seller's bank, and shall send a copy to the Seller. In the event that the Seller has any objection to the Buyer's claim request, the Seller shall inform the Buyer of this within two (2) weeks after receipt of claim notice and both Parties shall settle the dispute through negotiation. The Seller's objection shall not affect the Buyer's right to claim against the Performance Guarantee. In case both Parties fail to reach an agreement on claim, the dispute shall be submitted to arbitration according to Clause 26.
- 11.9 Without prejudice to the Buyer's other remedies available under the Contract and any law, if the Seller fails to deliver to the Buyer the essential Equipment, materials and Technical Documents within the time of delivery as specified in Clause 7, the Seller shall pay to the Buyer liquidated damages at the following rates:
- (a) For the first four weeks of delay:
One per cent (1.0%) of the total Contract Price per week;
 - (b) For the second four weeks of delay following the first four weeks of delay:
One and half per cent (1.5%) of the total Contract Price per week;
 - (c) For the ninth and subsequent week(s) of delay:
Two per cent (2%) of the total Contract Price per week;
- For the delay of less than one week, the liquidated damages shall be paid as one week delay.
- 11.10 The payment of Liquidated Damages for late delivery by the Seller shall not release its responsibilities to continue the delivery of the Equipment and Technical Documents.
- 11.11 In the event the delivery of any batch of Equipment under this Contract is delayed over one (1) months for the Seller's reason, the Buyer shall have the option to terminate partly or wholly the Contract, and reserve the rights for claim.
- 11.12 The liquidated damages for technical index are detailed in Appendix 10.

12 TAXES

- 12.1 The Buyer will pay all taxes, duties and fees required to be paid by it in Bahasa under Indonesia law for the import of Equipment into Indonesia. Any taxes, duties and fees arising in Indonesia and/or in third countries shall be settled by Seller and the Contract Sum shall not be adjusted in respect of any such costs.

13 TECHNICAL DOCUMENTS

- 13.1 The Seller shall provide to the Buyer Technical Documents for installation, setting-up,

operation and maintenance, as well as drawings relating to Equipment supplied (the “Manuals”) with the shipment of the Equipment.

- 13.2 The Technical Documents must be in such level of detail so as to allow operation, installation, setting-up, maintenance of Equipment.
- 13.3 Technical Documents, which must include necessary drawings, must be in English and in Bahasa by one original in each language. All expenses connected with translation into Bahasa shall be borne by the Seller.
- 13.4 The Seller shall be liable for all mistakes, omissions or discrepancies that may be encountered in the Technical Documents to Equipment.

14 CONDITIONS OF SUPPLY

- 14.1 The title to Equipment shall pass from the Seller to the Buyer after delivery to the Site.
- 14.2 Risk of loss to the Equipment will pass to the Buyer in accordance with CIF of Incoterms 2010.
- 14.3 Equipment must be shipped together with documents listed in Appendix 12. Such documents shall be packed in a packaging that provides safety of documents during the transportation until Equipment is delivered to the Buyer. Shipment of Equipment without such documents shall not be permitted.

15 TERMINATION OF THIS CONTRACT

- 15.1 The Buyer may terminate this Agreement if the Seller:
- (a) breaches the Equipment delivery schedule affecting the date of completion of the Project by **[30 days]**;
 - (b) becomes bankrupt or insolvent, which may result in its liquidation, or the court has made a receiving or administration order against it or its property, has compounded with its creditors or carried on business under a rehabilitation manager, receiver, trustee or manager for the benefit of its creditors or an act has been done or an event has occurred which (under applicable laws) has a similar effect to any of these acts or events;
 - (c) fails to provide the bank guaranties stated in Clause 4.3.
 - (d) materially breaches its obligation under the Contract;
 - (e) breaches its obligation and warranties under Clause 10 and 16 of the Contract.
- 15.2 In such circumstances the Buyer may terminate this Contract by giving to the Seller ten (10) working days prior notice in writing.

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- 15.3 The Buyer's decision to terminate this Agreement shall not prejudice any other rights of the Buyer under this Agreement or otherwise.

16 REPRESENTATIONS AND WARRANTIES

- 16.1 The Seller shall represent and warrant that the Equipment supplied under this Contract, including the results of the services performed:
- (a) have no defects in materials, design or workmanship;
 - (b) will operate without faults, will conform to the order and technical specifications, samples (if any) and items stipulated by this Contract;
 - (c) be fit for purpose as specified in the Contract;
 - (d) have a perfect transferable title, and will be free of any third party rights, attachments, charges and any other legal, financial or economic encumbrances.
- 16.2 The Seller must reimburse the Buyer for all costs which the Seller may incur in connection with the transportation of Equipment, which should be replaced/ repaired under the guarantee (which cannot be repaired or replaced in the country of the Plant), including costs and expenses for shipping such Equipment or their parts to the place of production, repair or replacement. After repair or replacement of such Equipment or their parts, the new guarantee period of 12 months shall apply to such Equipment or parts.

17 REPAIR OR REPLACEMENT

- 17.1 The Seller shall be liable for eliminating, by way of repair or replacement, at its expense, within the time agreed by the Parties including the time for Equipment manufacturing and delivery, any defects or damages to any parts of Equipment which may occur from the date of delivery until expiry of the Guarantee Period due to:
- (a) Poor quality material, non-qualified personnel or poor design, or
 - (b) Negligent act or omission of the Seller during the said period of time.
- 17.2 Supply of properly repaired or replaced parts of Equipment, insured with transportation paid to the point of destination specified by the Buyer, shall be the obligation of the Seller pursuant to this Article with respect to defective or damaged parts. At the Seller's request, the Buyer may return such parts to the Seller at Seller's risk and cost.

18 INDEMNITY AND LIABILITIES

- 18.1 The Seller shall defend, indemnify and hold the Buyer harmless against any damage, action, liability, loss and other expenses, including reasonable attorney's fees and other payments, either connected or not to the litigation or legal process arising in connection with:

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- (a) third party claims against the Buyer for breach of copyright of such third party by use of Equipment supplied by the Seller. The Seller shall, without delay, present to the appropriate arbitration and court bodies documents proving absence of breach of third party copyright, and take part in the legal proceedings and pay all related costs;
- (b) third party claims for damage to persons or property due to failure by the Seller to comply with legislative acts, resolutions, rules and instructions which may affect the Equipment, Services and works provided or performed in accordance with this Contract.
- 18.2 In the event that the court or arbitration tribunal holds the third party claims lawful, all losses suffered by the Buyer shall be paid by the Seller.
- 18.3 This indemnity shall be in addition to other Seller's guarantee obligations. If the Seller cannot compensate the damage and make a defense against a claim, the Buyer may defend itself. In such case the Seller must reimburse the Buyer for any reasonable attorney's fees, all court costs and expenses connected with settlement or assertion of rights under such claims, within thirty (30) days upon receipt of each Buyer's demand in writing.
- 18.4 Save as otherwise provided in this Contract, neither Party shall be liable to the other for any indirect or consequential damage.

19 INSURANCE

- 19.1 The Seller shall insure Equipment (or parts thereof) and maintain such insurance at full replacement value against risks. Such insurance shall be effective from the date of commencement of manufacture until delivery of Equipment in accordance with this Contract. The Seller must ensure that the Equipment supplied under this Agreement are covered by the Insurance Policy.
- 19.2 Insurance shall be provided by an insurance company from China or other country or other country, and the Seller shall, at the Buyer's request, provide a policy and relevant insurance premium payment documents or sufficient evidence of insurance coverage. The Seller shall notify the Buyer of any changes in the terms and conditions of the insurance policy or insurance amount.
- 19.3 If the Seller fails to acquire and maintain an insurance in accordance with these provisions, the Buyer may acquire and maintain insurance and pay such insurance payments as may be required for this purpose, and, from time to time, withhold the sums paid by it from any money payable to the Seller under this Contract, or recover them from the Seller.

20 FORCE MAJEURE

- 20.1 If any Party to this Contract is unable to fulfil its obligations under this Contract as a result of occurrence of Force Majeure such as: earthquake, typhoon, flood, fire, military operations, blockade, community commotion strikes, civil unrest, change of state policy or other unforeseen events, the effect of which cannot be predicted, prevented or avoided.
- 20.2 If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, that party shall be excused from whatever performance is affected by the Force Majeure event to the extent so affected, provided that:
- (a) the non-performing party, within a reasonable period after the occurrence of the inability to perform due to a Force Majeure event, (i) provides written notice to the other party of the particulars of the occurrence, including an estimation of the event's expected duration and probable impact on the performance of its obligation hereunder, and (ii) continues to furnish timely, regular reports with respect thereto during the period of Force Majeure;
 - (b) The non-performing party shall exercise all reasonable efforts to continue to perform its obligations hereunder and remedy its inability to so perform;
 - (c) The non-performing party shall provide the other party with prompt notification of the cessation of the event of Force Majeure, giving rise to the excusal from performance; and
 - (d) No obligation of either party that arose prior to the occurrence of the event of Force Majeure shall be excused as a result of such occurrence.
- 20.3 If the Force Majeure event and its effect last for more than six months, either Party may terminate this Contract unilaterally.
- 20.4 The Parties shall make settlements in accordance with Clause 15 within five days from the date of termination of the Contract.

21 OTHERS

- 21.1 This Contract shall be made in 2 originals, each original having equal force and effect. The Buyer and the Seller shall keep one original each.
- 21.2 Any amendments, modifications, cancellations or termination of this Contract shall be agreed by the parties in writing, unless provided otherwise. The Parties expressly waive Articles 1266&1267 of the Indonesian Civil Code to the extent that the court decision or judicial pronouncement is required to terminate the Contract.
- 21.3 The Parties agree to keep this Contract confidential (except when they must disclose

part of the Contract by operation of law) and will not disclose to any third party any existing or future know-how, technical expertise, non-patented inventions or other confidential information during the effective term of this Contract and during ten (10) years thereafter. The Parties also agree to apply the provisions of the Contract on confidentiality to its personnel or other representatives by way of conclusion of legally binding agreements.

- 21.4 The Parties shall not assign all or any of its rights and obligations to any third party, except with the prior consent of the other party.

22 COMMUNICATIONS AND DELIVERY

- 22.1 Any notice or other communication required hereunder must be given in English, and must be delivered by courier, registered air mail or other manner against signature, or transmitted by fax.
- 22.2 Any notice delivered to the Seller from the Buyer or to the Buyer from the Seller at the bellow addresses or numbers shall be deemed received by the Buyer or Seller.

Seller:

Address:

Post Code:

Tel:

Fax:

Buyer: PT Dairi Prima Mineral

Address: Jl. Runding No. 1 A, Gerbang III-Sidiangkat, Sidikalang , Dairi Regency , North Sumatra.

Post Code: 22216

Tel: Li Qiang 0821 8344 1391

Fax: li_qiang@nfc-china.com

- 22.3 In absence of certificate proving receipt of a notice or other communication, such notice or communication shall be deemed received:
- (a) on the date of dispatch to the addressee indicated in the Contract, if sent by courier, registered air mail or in other manner against signature on receipt;
 - (b) at the time of receipt of full and clear transmission report, if sent by fax or email.

23 LANGUAGE OF THE CONTRACT

This Contract is made and executed in English.

24 SEVERABILITY

If any part or provision of this Contract is recognized invalid or does not operate, such invalidity or unenforceability shall not affect the validity of other parts or provisions of this Contract.

25 GOVERNING LAW

This Contract shall be governed by norms of the laws of Indonesia.

26 DISPUTES

Any dispute, controversy, difference or claim arising out of or relating to this Contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be Hong Kong.

The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English.

27 EFFECTIVENESS

The Contract shall become effective from the Effective Date.

[The remainder of this page has been left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Contract on the date and year first above written.

The Seller's Representative

The Buyer's Representative

PT Dairi Prima Mineral

Gong Xuedong